

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH H. BEATON,

Plaintiff,

v.

JPMORGAN CHASE BANK N.A.,
NORTHWEST TRUSTEE SERVICES, INC.

Defendant.

NO. 11-CV-0872-RAJ

**DEFENDANT CHASE'S REQUEST
FOR JUDICIAL NOTICE IN
CONJUNCTION WITH CHASE'S
FRCP 12(b)(6) MOTION TO
DISMISS PLAINTIFF'S [FIRST]
AMENDED COMPLAINT FOR
DAMAGES**

NOTING DATE: January 27, 2012

I. INTRODUCTION AND RELIEF REQUESTED

In conjunction with its Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Plaintiff's [First] Amended Complaint for Damages, Defendant JPMorgan Chase Bank, NA, an acquirer of certain assets and liabilities of Washington Mutual Bank from the Federal Deposit

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1 Insurance Corporation (“Chase”), requests the Court take judicial notice of certain facts
 2 pertinent to its motion, supported by recorded and other documents, pursuant to Fed. R.
 3 Ev. 201.

4 II. STATEMENT OF LAW

5 Judicial notice may be taken at any stage of the proceeding. Fed. R. Ev. 201(d). A
 6 court shall take judicial notice if requested by a party and supplied with the necessary
 7 information. Fed. R. Ev. 201(d). A judicially noted fact must be one not subject to
 8 reasonable dispute in that it is capable of accurate and ready determination by resort to
 9 sources whose accuracy cannot reasonably be questioned. Fed. R. Ev. 201(c)(2).

10 Documents whose contents are alleged in a complaint but which are not physically
 11 attached to the pleading may be considered in ruling on a CR 12(b)(6) and Fed. R. Civ. P.
 12 12(b)(6) dismissal motion. *Rodriguez v. Loudeye Corp.*, 144 Wn.App. 709, 726, 189 P.3d
 13 168 (2008); *also see, e.g., Branch v. Tunnell*, 14 F.3d 449, 453–54 (9th Cir.), *cert. den’d.*,
 14 512 U.S. 1219, 114 S.Ct. 2704, 129 L.Ed.2d 832 (1994), *overruled on other grounds by*
 15 *Galbraith v. Co. of Santa Clara*, 307 F.3d 1119 (9th Cir.2002); *In re Stac Elecs. Sec. Litig.*,
 16 89 F.3d 1399, 1405, n. 4 (9th Cir.1996) (appropriate for trial court to consider other
 17 portions of a document referenced in a complaint in a motion to dismiss and doing so does
 18 not convert the motion into one for summary judgment), *cert. den’d.*, 520 U.S. 1103, 117
 19 S.Ct. 1105, 137 L.Ed.2d 308 (1997).

20 The existence and fact of recorded documents are appropriate subjects of judicial
 21 notice, as they satisfy the requirements of Fed. R. Ev. 201(b)(2). Indeed, numerous cases

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1 arising from borrowers' challenges to institution of nonjudicial foreclosure proceedings, as
 2 here, specifically hold that judicial notice of the Note, Deed of Trust, Notice of Trustee's
 3 Sale, and related documents is appropriate, and does not convert a dismissal motion into
 4 one for summary judgment. *See, e.g., St. John v. Northwest Trustee Svcs., Inc.*, 2011 WL
 5 4543658, *2, n. 1 (W.D.Wash.) ("A court may take judicial notice of authentic documents
 6 that are publicly recorded, attached to or relied extensively upon in a plaintiff's
 7 complaint."); *Corales v. Flagstar Bank, FSB*, 2011 WL 4899957, *10 (W.D.Wash.)
 8 (Granting dismissal, stating "a review of the various publically recorded documents that
 9 were submitted ... supports [defendant's] motion to dismiss"); *Gruendl v. Wells Fargo*
 10 *Bank, N.A.*, 2011 WL 1885386, *1 (W.D.Wash.) ("The Court also considered the deed of
 11 trust, notice of trustee's sale, and the trustee's deed because they have been recorded in the
 12 Whatcom County Auditor's office."); *Ballard v. Bank of America, N.A.*, 2011 WL 941006,
 13 *2 (W.D.Wash.) ("The Court may take judicial notice of publicly recorded documents
 14 without converting the instant motion to one for summary judgment. ... Therefore, the
 15 Court considers [the] note and deed of trust"); *Joern v. Ocwen Loan Svcg., LLC*, 2010
 16 WL 3516907, *2 (E.D.Wash.) (Court took judicial notice of matters of public record.).

17 Chase requests judicial notice of the following facts, recorded instruments
 18 concerning Plaintiff's subject Property, and documents referenced in and/or attached to
 19 Plaintiff's [First] Amended Complaint:
 20
 21

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1 **Fact Four:** On September 25, 2008, the Office of Thrift Supervision closed Washington
2 Mutual Bank and appointed the FDIC as Receiver for Washington Mutual Bank.

3 **Source Four:** Office of Thrift Supervision Receivership Order dated September 25, 2008, a
4 true and correct copy of which is attached hereto as **Exhibit 4.**

5
6 **Fact Five:** On September 25, 2008, Chase purchased certain of WaMu's assets, including
7 Ms. Beaton's loan, but expressly disaffirmed liability for any potential claims which may be
8 asserted by WaMu's borrowers arising from existing WaMu loans.

9 **Source Five:** Selected portions of Purchase and Assumption Agreement dated September 25,
10 2008, a true and correct copy of which is attached hereto as **Exhibit 5.**

11
12 **Fact Six:** As WaMu's successor in interest to Ms. Beaton's loan, Chase chose to appoint a
13 Successor Trustee for the Deed of Trust, Defendant Northwest Trustee Services, Inc.
14 ("NWTs").

15 **Source Six:** Appointment of Successor Trustee dated November 29, 2010, and recorded on
16 December 1, 2010, as King Co. Auditor's No. 20101201001577, a true and correct copy of
17 which is attached hereto as **Exhibit 6.**

18
19 **Fact Seven:** Approximately two years after Chase purchased Ms. Beaton's loan, on or about
20 June 1, 2010, Ms. Beaton defaulted in making her home loan payments and failed to cure the
21

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1 default. The Trustee of the Deed of Trust, NWTs, served Ms. Beaton with a Notice of
2 Trustee's Sale, scheduling the Trustee's sale for March 18, 2011.

3 **Source Seven:** Notice of Trustee's Sale dated December 16, 2010, and recorded on
4 December 16, 2010, as King Co. Auditor's No. 20101216000340, a true and correct copy of
5 which is attached hereto as **Exhibit 7**.

6
7 **Fact Eight:** On March 1, 2011, Ms. Beaton caused to be recorded the following four
8 instruments against her property:

- 9 1. Uniform Commercial Code ("UCC") "Common Law Claim of Sweat Equity" lien
10 claim in the amount of \$2,033,236.08;
- 11 2. "Common Law Lien in the nature of a Mechanics Lien for Services" claim in the
12 amount of \$25,000.00;
- 13 3. "Notice and Declaration of Retroactive Revocation of Power of Attorney"; and
14 4. "Modification of Deed of Trust Rider."

15 **Source Eight:** UCC Financing Statement and attached documents dated February 8, 2011,
16 and recorded on March 1, 2011, as King Co. Auditor's No. 20110301001395, a true and
17 correct copy of which is attached hereto as **Exhibit 8**.

18
19 **Fact Nine:** On April 19, 2011, Ms. Beaton caused to be recorded with the King County
20 Auditor's Office a document titled "Affidavit of Interest/Non-Abandonment," purporting to
21 "cancel" the Deed of Trust.

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1 **Source Nine:** UCC Financing Statement dated April 18, 2011, and recorded on April 19,
2 2011, as King Co. Auditor's No. 20110419000819, a true and correct copy of which is
3 attached hereto as **Exhibit 9**.

4
5 **Fact Ten:** Both federal and private agencies have issued consumer warnings to individuals
6 facing foreclosure to carefully evaluate foreclosure avoidance schemes.

7 **Source Ten:** U.S. Federal Trade Commission publication, "Mortgage Assistance Relief
8 Scams: Another Potential Stress for Homeowners in Distress," at
9 <http://www.ftc.gov/bcp/pubs/consumer/credit/cre42.shtm>, a true and correct copy of which is
10 attached hereto as **Exhibit 10**.

11 **Source Eleven:** U.S. Departments of the Treasury and Housing and Urban Development
12 publication, "Beware of Foreclosure Rescue Scams – Help is Free," at
13 <http://www.makinghomeaffordable.gov/learn-more/Pages/beware.aspx>, a true and correct
14 copy of which is attached hereto as **Exhibit 11**.

15 **Source Twelve:** U.S. Comptroller of the Currency Consumer Advisory publication, "OCC
16 Consumer Tips for Avoiding Mortgage Modification Scams and Foreclosure Rescue Scams,"
17 at <http://www.occ.gov/news-issuances/consumer-advisories/2008/consumer-advisory-2008->
18 [.....](http://www.occ.gov/news-issuances/consumer-advisories/2008/consumer-advisory-2008-), a true and correct copy of which is attached hereto as **Exhibit 12**.

19 **Source Thirteen:** Neighborhood Reinvestment Corporation publication, "Common Loan
20 Modification Scams," at <http://www.loanscamalert.orb/common-scams.aspx>, a true and
21 correct copy of which is attached hereto as **Exhibit 13**.

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IV. CONCLUSION

In view of the foregoing sources, whose accuracy and authenticity cannot reasonably be questioned, and pursuant to Fed. R. Ev. 201(c)(2), Chase respectfully requests the Court judicially notice the facts stated above in connection with its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6).

Dated this 3rd day of January, 2012.

/s/ Barbara L. Bollero

David A. Weibel, WSBA #24031

Barbara L. Bollero, WSBA #28906

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